

Salmagundi

CHOOSING SUPREME COURT JUSTICES

John G. Heyburn II
January 23, 1992

The history of choosing of United States Supreme Court Justices is the history of men attempting to effect great issues, to win elections, to reward and promote close associates and, occasionally, to do something statesmanlike or noble (often in an attempt to win elections).

Recently, our attentions have been focused upon the Clarence Thomas hearings and many people in our country are concerned about the basis for choosing of our nominees and the process that we all must endure to finally obtain confirmation. It seems to have reached such a dismal level that many people feel that a series of fundamental changes must occur. If not, we risk a detrimental impact on the entire process and ultimately a decline in the caliber of those serving on the bench. Among those trends which are commonly cited are

- Recent Presidents are attempting to mold the court in their own image by stacking the Court with nominees of the same ideology.
- By the same token the Senate has broadened and deepened the areas of its inquiry, seeking to discuss the nominees' view on specific issues and by all of its actions generally politicizing the appointment process.

For those of you who think that this is true, consider for a moment the following glimpse of history. On January 28, 1916, President Woodrow Wilson nominated Louis B. Brandeis for a seat on the United States Supreme Court. On June 1, 1916, the Senate finally approved that nomination. What went on between is instructive when one begins to consider whether or not the appointment process is really changed all that much.